IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

CRL.A.No. 1200 of 2004()

SC.33/2002 of I ADDL. SESSIONS COURT, KOLLAM
.....

APPELLANT: ACCUSED

SURESH KUMAR, S/O.SURENDRAN,
AGED 23 YEARS, JAYANTHI COLONY,
PLOT NO. 6, ALUMOODU PAMBILIL CHERRY,
PANAYAM VILLAGE.

BY ADV. SRI.C.AJITH KUMAR (KALLESSERIL)
SRI.C.ANILKUMAR (KALLESSERIL)

RESPONDENTS: COMPLAINANT

STATE OF KERALA, (REPRESENTED BY THE
CIRCLE INSPECTOR OF POLICE, KUNDARA,
IN CRIME NO. 243 OF 2000 OF ANCHALUMMOOD
POLICE STATION) REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

CRL.A.NO.1200 OF 2004 ()

Dated this the 10th day of April, 2007

J U D G M E N T

KOSHY,J.

Appellant was accused of committing murder of his neighbour Sobha and he was convicted for the offences punishable under Sections 449 and 302 of the Indian Penal Code. Deceased Sobha is the wife of PW5 Soman and she was residing along with PW3 mother-in-law and two children. One of her children was examined as PW4. They were residing in building No.XI of Jayanthi colony which belong to mother of Soman. Accused is an unmarried neighbour of Sobha. According to the prosecution, he had demanded Sobha to have illicit relationship with him but she refused and as a result of which he caused hurt on her on 6.5.2000, regarding which, Sobha filed Ext.P2 complaint before Anchalummoodu Police station. Due to the enmity caused by her in refusing to have illicit relationship with the accused and filing of police

complaint against him, accused on 10.8.2000 at about 9.30 a.m. with intent to commit murder of Sobha, criminally trespassed into the courtyard of the house armed with a knife while Sobha was engaged in washing household items in the courtyard. The accused attacked Sobha but she ran away and the stab fell at the back of her left ankle injuring her. She ran inside the room and embraced her mother-in-law, who was lying on a cot therein. The accused criminally trespassed into the room following her and stabbed her on the left shoulder and thereafter dragged her into the courtyard and inflicted several stab injuries including fatal injury at the right chest. She was admitted in the District Hospital at about 10'O clock and died as a result of the gravity of the injuries sustained at about 11'O clock noon on the same day. PW1 reached the police station and gave Ext.P1 F.I.Statement. Crime was registered and inquest was conducted immediately on the same day. Ext.P1 was given without any delay at 12 a.m. In Ext.P1 statement, he stated the prosecution version of the case. He was the close neighbour of the deceased. According to him at about 9.30 a.m. he heard a cry "എന്നെ കൊല്ലുന്നേ".

Then he went there and many people gathered around and he saw deceased lying in the pool of blood and accused was stabbing at the stomach and thereafter he threw away the knife to the sand. He along with others immediately took the deceased and deceased told him that accused stabbed her. He along with Saju took her to the road and in a car deceased was brought to the hospital at 10'O clock. He also stated that the alleged motive behind the incident was that the deceased was not willing to the wishes of the accused. While giving evidence he stated that by hearing the cry he reached the house and at that time he saw deceased lying in a pool of blood. But unlike the version in Ext.P1 he stated that he did not say that he had seen accused inflicting self injuries or deceased telling that accused had stabbed her. Therefore he was declared hostile. But at the same time he stated that he has given Ext.P1 in the police station and S.I. read the statement and after finding that it is correct he signed it. He deposed as follows:

> "ഇതേ സംബന്ധിച്ച ും police൹ മൊഴി കൊട ുത്തിരുന്നു. എന്നെ കാണിച്ച മൊഴിയിലെ ഒപ്പ് എൻ്റേതാണ്. Station൹ പോയി മൊഴി കൊട ുത്തതാണ്. Marked as Ext.P1. S.I. ഞാൻ

കൊടുത്ത മൊഴി വായിച്ചുകേൾപ്പിച്ചു. ശരിതന്നെ എന്നു എന്ന് ഞാൻ ഒപ്പിട്ടുകൊടുത്തു."

He later stated that he and Saji took her to the road and later brought to the hospital. He also stated that at the place of incident accused was there and there was a stab injury on the accused. But according to him he cannot say how it occurred but the knife used for the same is MO2. He stated as follows:

"പ്രതിയുടെ ദേഹത്ത് എങ്ങനെ കുത്തുവന്നു എന്ന് ശ്രദ്ധിച്ചില്ല. ആ കത്തി കണ്ടാലറിയാം. എന്നെ കാണിച്ചതാണ്. Marked as MO2."

Even though he was declared hostile he did not say the presence of the husband of the deceased at the place of occurrence. No question was also put to him regarding that. It is true that the F.I.Statement even though a very important document is not a substantial piece of evidence and it has to be proved. Here even though he was declared hostile he stated that he has given F.I.Statement in the police station and he signed it after it was read out to him after satisfying himself that it is correct. Later in cross examination he stated that it

was signed at the house on the next day. Evidence of hostile witnesses need not be discarded but it is the duty of the court to swift out the evidence and to find out the truth. Court can accept believable part of the testimony of hostile witnesses. See ***Gura Singh v. State of Rajasthan ((2001) 2 S.C.C. 205), State of Uttar Pradesh v. Ramesh Prasad Misra and another (A.I.R. 1996 S.C. 2766), Gurupreet Singh v. State of Haryana (A.I.R. 2002 S.C. 3217)***. Presence of the accused at the scene of occurrence, identity of MO2 knife etc. were proved by PW1. In this case, the medical evidence shows that the deceased was brought to the hospital by PW1 and another and cause of injuries was stated by him. He was deliberately telling lie that he did not see the actual stabbing to help the accused before the court.

2. PW2 is the sister of PW1. She deposed in terms of the prosecution story. She stated that she along with PW1 came after hearing the cry and last part of stabbing by the accused was also seen. She also stated that earlier in the morning she saw accused sharpening MO2 knife. That was not stated in the

previous statement and at the maxim that part can be taken as exaggeration and can be excluded. It is also stated by her that mother of accused used to abuse her and tried to discourage the marriage of her sister. Not even a suggestion was made by her regarding the presence of PW5 husband of the deceased in the place of occurrence. She categorically deposed that she, PW1, PW5 and some others including the child of the deceased (PW4) who came from nearby place where he was studying saw the incident.

3. PW3 is the mother-in-law of the deceased. She was lying in the room. Her right side was paralysed and she also saw the entire part of the incident and her version is in conformity with the prosecution version. She also stated that the accused used to disturb the deceased. Therefore husband of the deceased was not in speaking terms with the accused. PW4 is the child. He also stated in accordance with the prosecution version. He stated that while he was attending (preprimary class) nearly heard the cries of her mother and hearing the cry he came there and saw accused stabbing her

mother. He had only some palm leaves in his hands and that leaves were blood stained. It was produced as MO4. During cross examination the entire story was reiterated. But being a child witness we are not entirely depending on his evidence.

4. PW5 is the husband. He stated that he was employed with PW6 in concrete work and he was there upto 6'0 clock and by 6'0 clock he heard the news. He denied that he made a previous statement to the police that he came to know of the incident by 12 0'clock and according to us that was a mistake committed by the police. PW6 the employer also deposed that PW5 was employed by him on the date of incident of murdering of the deceased. PW7 is the doctor. He deposed that he issued wound certificate to the accused after examining him. Ext.P4 is the wound certificate issued to the accused. The cause of the injury and history stated as alleged self inflicted injury which is "തന്നത്താൻ കുത്തിയതിൽ വച്ച് patient conscious". He deposed that the accused himself has stated the history of the incident. He had two wounds. He also stated that the alleged injury can be self inflicted. PW7 also issued Ext.P3 wound certificate for

the deceased. In there it is specifically stated that she was brought by Renjith PW1 and the details of injuries is stated as "കത്തി കൊണ്ടു കുത്തിയതിൽ" and she was in a gasping stage. When patient is not conscious the cause of injuries stated by the patient is also separately shown.

5. In 313 statement suggestion of the accused was that while he was in the house, he heard the sound from the house of the deceased and when he came there at that time he saw PW5 husband of the deceased was causing injuries to the deceased and he intervened by MO2 which was used by the accused in inflicting injuries to the deceased. Accused stabbed him also. DW1 another neighbour was examined who started to live there only for three months before the incident. He also supported the defence story. But he stated that PW1 was not present there. He says that when he came there, he saw both accused and deceased lying in the courtyard of the house and also saw the husband of the deceased with MO2 knife. He admitted that the mother-in-law of the deceased was lying there with paralysis. But in cross examination he admitted that

he has not seen deceased speaking with the accused. He further deposed that apart from the mother-in-law nobody was there in the house and he also stated that he was not aware who has taken the deceased to the hospital or by which vehicle she was taken to the hospital. He also stated that he has got hearsay information that after ten minutes the accused was also taken to the hospital. He took the neighbouring house of the deceased on rent only for six months. He stated as follows:

> "സോമന്റെ തന്നെ പുരക്കകത്ത് തളർന്നുകിടക്കയായിരുന്നു. ആ വീട്ടിലെ വേറെ ആരും അവിടെയില്ലായിരുന്നു. സോമന്റ അമ്മ മാത്രമേ ഉണ്ടായിരുന്നുള്ളൂ. ആ വീട്ടിലെ വേറെ ആരെയും ഞാൻ കണ്ടില്ല. ആരൊക്കെയാണ് പരിക്കേറ്റവരെ ആശുപത്രിക്കു കൊണ്ടുപോയതെന്നറിയില്ല. ഞാൻ താമസമായിട്ട് മൂന്നു മാസമേ ആയിരുന്നുള്ളൂ. അതിനു മുമ്പ് പതയത്ത് ചോനഞ്ചിറയിൽ സ്വന്തം വീട്ടിൽ താമസമായിരുന്നു. അതു വിറ്റിട്ട് ഈ വീട് ആറു മാസത്തേക്ക് വാടകയ്ക്കെടുത്തതാണ്. ശോഭനയെ ഏതു വണ്ടിയിൽ കൊണ്ടു പോയി എന്നു ഞാൻ കണ്ടില്ല. എത്ര പേർ ചേർന്നു കൊണ്ടുപോയി എന്നും കണ്ടില്ല. ശോഭനയെ കൊണ്ടുപോയപ്പോഴും പ്രതി രക്തത്തിൽ കുളിച്ചുകിടക്കുകയായിരുന്നു. പത്ത് മിനിറ്റിനു ശേഷം പ്രതിയെ കൊണ്ടുപോയതായി പറഞ്ഞറിഞ്ഞു."

This shows that DW1 was nowhere in the place and he has not seen how deceased was taken to the hospital. If in the house

PW3, PW5 was there he could not have asserted that in the house there was only deceased and mother-in-law and accused was lying on the southern side. The doctors evidence would clearly shows that PW1 has taken the deceased to the hospital and he narrated the history and cause of injuries to the doctor within half an hour of the incident when deceased was taken to the hospital. DW1 denied even the presence of PW1. It is true that defence witnesses also can be believed if it is credible as held in ***State of Haryana v. Ram Singh (JT 2002 (1) SC 273)*****.** But here there is no reason to believe DW1. Coupled with the evidence of the doctor PW7 the evidence of PW1 corroborated by Ext.P1 and evidence of PWs.2 and 3, trial court rightly disbelieved DW1. Doctor has also endorsed in Ext.P4 wound certificate of the accused that his injury can be self inflicted as stated by accused himself. If PW5 has inflicted the above injury and police is not registering the case he would have filed private complaint against the husband of the deceased. But no such complaint was filed. He has not stated that PW5 inflicted injuries on her when he was produced before the Magistrate. He stated that Ext.P2 complaint filed by

deceased against accused was signed in Malayalam. However case was not registered because the police officer has explained that deceased requested that case should not be registered but only he should be warned. It is also argued that there was a delay in reaching the F.I.R to the court. F.I.Statement was recorded immediately after the incident without any delay. Even though it is stated to be dispatched on the same day it reached the court only on the next day. No specific question was asked to the Investigating Officer why the delay was caused. Apart from the above, investigation started immediately after F.I.R. was registered and inquest was conducted and therefore mere delay was occurred in reaching the F.I.R. by the Magistrate Court is of no consequence as held by Apex Court in ***Pala Singh and another v. State of Punjab (A.I.R. 1972 SC 2679)***. It is argued that injury on accused was not explained. That is also not correct. By proving Ext.P4 and by examining PW7 the prosecution has proved how injury occurred to the accused. Injuries on the accused is explained in Ext.P1 also. We are of the view that from the totality of the evidence especially considering the

evidence of PWs.1, 2 and 3 coupled with medical evidence prosecution proved the case against accused beyond reasonable doubt. It is true that defence has got a story that PW5 has stabbed him and deceased and defence need prove a probable story. But here the story of the defence is not a probable one and no specific question were asked even to the hostile witness PW1 or eye witnesses PWs.2 and 3 regarding the presence of PW5. We see no reason to disagree with the findings of the trial court. Hence we confirm the conviction and sentence and hence this criminal appeal is dismissed.

J.B.KOSHY, JUDGE

T.R.RAMACHANDRAN NAIR, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

O.P.NO. OF 2006 ()

J U D G M E N T

1th January, 2007